

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SELIM ZHERKA, and THE GUARDIAN NEWS, INC.,
Plaintiffs,

07 Civ. 4065 (CLB)

-against-
RUSSELL MARTINEZ, individually, STEPHEN
FORCE, individually, and EDWARD FALCONE,
individually,

Defendants.

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**DECLARATION IN SUPPORT
OF MOTION**

RUSSELL MARTINEZ, hereby declares under penalty of perjury that the following is true and correct:

1. I am employed by the Yonkers Public Library as its Head Custodian at the Riverfront Library, located at 1 Larkin Center, Yonkers, New York 10701 (the "Riverfront Library"). I am also an individually-named defendant in the above-captioned action.
2. I submit this Declaration in support of the motion made by the Yonkers Public Library requesting: (i) leave to intervene in this action, and (ii) a preliminary injunction requiring the removal of certain receptacles used for dispensing free copies of The Westchester Guardian newspaper (the "Guardian Boxes") that were placed inside the Riverfront Library and the Grinton I. Will Branch of the Yonkers Public Library (the "Will Library"). The Will Library is located at 1500 Central Park Avenue, Yonkers, New York 10710.
3. Except where otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge.

4. By way of background, my duties as the Head Custodian at the Riverfront Library include cleaning, making minor repairs, setting up conference rooms for meetings, preparing cleaning schedules and supervising a cleaning staff of approximately seven (7) individuals.

5. In early August 2007, I observed that a Guardian Box had been placed inside the atrium of the Riverfront Library. Later that month, I was instructed by a supervisor to remove the Guardian Box from the atrium and to put it into storage on the premises. I was also instructed to place any newspapers in the Guardian Box next to the other free newspapers and periodicals that the Riverfront Library makes available near its check-out desk. I complied with these instructions.

6. Shortly thereafter, I observed that two (2) new Guardian Boxes had been placed inside the Riverfront Library. One of these boxes had been placed in the atrium, in essentially the same spot as the first Guardian Box that I had removed. The other Guardian Box had been placed at the bottom of a stairwell, near a side entrance into the building.

7. Once again, I was instructed by a supervisor to move these new Guardian Boxes into storage with the other Guardian Boxes, and to place any newspapers they contained in the same location as the other free newspapers that are dispensed near the library's check-out desk. I complied with these instructions.

8. In or around August 2007, a man whom I understood to be Plaintiff Selim Zherka, and a woman, appeared at the Riverfront Library. Mr. Zherka announced that they wanted to pick-up the Guardian Boxes. The woman with Mr. Zherka had a video camera and appeared to be selectively recording what transpired.

9. A supervisor instructed me to retrieve the Guardian Boxes from storage and bring them upstairs for Mr. Zherka, which I did. Mr. Zherka asked that the Guardian Boxes be placed in the atrium at the Riverfront Library so he could have them picked-up.

10. On or about the following day, I observed that a single Guardian Box still remained in the atrium of the Riverfront Library. It had been placed against an interior column that stands near the main entrance of the building, where anyone wishing to enter the library will necessarily walk closely by it.

11. At the present time, this Guardian Box remains in the atrium of the Riverfront Library.

12. As mentioned, the Riverfront Library distributes free newspapers and similar periodicals at a counter located near its check-out desk. The Riverfront Library does not, and has never, dispensed any free newspapers, periodicals or similar materials from its atrium. The atrium at the Riverfront Library is used for art exhibits, public meetings and other group functions, which occur on a very frequent basis.

Dated: November 2, 2007
Yonkers, New York



RUSSELL MARTINEZ